IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17425 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

RAGHUVIR STEEL TREADERS

Versus

RAJKOT MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 17425 of 2003

MR VIMAL M PATEL for Petitioner

MR AK CLERK for Respondent No.1

NOTICE UNSERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 28/07/2004

ORAL JUDGEMENT

1. The present petition has been preferred by the petitioner under Article 227 of the Constitution of India challenging the order dated 02.02.2002 passed by the 6th

Extra Assistant Judge, Rajkot District, Rajkot in Civil Misc. Appeal No.94 of 1996.

2. The present petitioner is the original appellant in Civil Misc. Appeal No.94 of 1996 and original plaintiff in Regular Civil Suit No.854 of 1995, wherein the petitioner has been prayed that the respondent Corporation of City of Rajkot District should be restrained from taking any action in pursuance of the notice bearing No.1250 dated 13.06.1995 issued under Sections 254/260(1) of the Bombay Provincial Municipal Corporations Act, 1949 (for short "the B.P.M.C. Act").

3. Learned advocate for the petitioner submits that the construction, in existence, was made prior to coming into force of the said Act of the City of Rajkot District, it is only his shed for keeping cattles in the place. The petitioner is doing a business of partnership since 1980. The petitioner has also relied upon the certificate under Shops and Establishment Act, 1948, which is registered with the respondents (original defendants) in the year 1980. When the said construction was in the knowledge of the respondents, is of the year 1980 and, therefore, the respondents have no power, jurisdiction or authority to issue a notice under the B.P.M.C. Act.

4. Learned advocate for the respondents submit that the present petition is premature in nature. Only show cause notice has been issued and final decision yet to take place. Several contentions have been raised by the learned advocate for the respondents that whether the petitioner (original plaintiff) is a registered partnership firm or not. No such certificate of registration, has ever been placed by the petitioner before the trial Court, and statutory notice as required under the B.P.M.C. Act, has also not been given by the present petitioner. The main contention of the learned advocate for the respondent is that the petitioner has erected upon one office building on 80 feet wide road in Patel Nagar, Street No.7, which is against the rules of construction. The petitioner is using the said premises as an industrial unit. Thus, there is a change of user from agricultural to industrial purpose and, therefore, the respondent - authority has issued notice under the B.P.M.C. Act and instead of giving any reply to the respondent - authority, straightway, the suit has been filed by the petitioner (original plaintiff), which is premature in nature. Therefore, the order passed by the lower appellate Court is true and correct and, therefore, this petition deserves to be dismissed.

5. I have perused the papers of the case and the order passed by the Courts below. There is no error committed by the lower appellate Court i.e. 6th Extra Assistant Judge, Rajkot District, Rajkot, while passing an order in Civil Misc. Appeal No.94 of 1996 dated 02.02.2002. The reasons assigned in para-11 of the order in Civil Misc. Appeal No.94 of 1996 are true, correct and in consonance with the facts and law. There is no error, much less the error apparent on the face of the record and there is no perversity in the said order. The whole suit is based upon the notice. The notice could have been replied by the petitioner (original plaintiff). Whatever contentions have been raised in the memo of the plaint and the present petition, could have been raised before the respondent - authority, at the time of deciding the said show cause notice. Therefore, the order passed by the lower appellate Court requires no interference by this Court. There is no substance in this petition and it is dismissed accordingly, with a direction to the trial Court i.e. Civil Judge (S.D.), Rajkot to hear and decide Regular Civil Suit No.854 of 1995 as early as possible and practicable and preferably with a period of three months from the date of the receipt of the writ of this Court. Notice is discharged. No order as to costs.

[D. N. Patel,J.]

(vijay)